

A RESOLUTION BY:

02-*R*-0585

THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO SETTLE THE CASE OF THOMAS L. LEWIS V. THE CITY OF ATLANTA, PENDING IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA 1:99-CV-3078-ODE BY PAYMENT OF THE SUM OF \$200,000 AND BY ENTERING INTO A CONSENT ORDER ALLOWING REINSTATEMENT OF THOMAS L. LEWIS TO EMPLOYMENT WITH THE CITY; AND FOR OTHER PURPOSES.

WHEREAS, on September 30, 1998, the Chief Financial Officer and the Chief Operating Officer advised Commissioners and Department Heads responsible for the operational departments of the City of Atlanta that they would be required to submit their budget for 1999 with a permanent 18% reduction in funds allocation; and

WHEREAS, Thomas L. Lewis, an employee of the Department of Finance, ("Lewis") held a position which was proposed to be included in the list of the positions to be abolished by the "personnel paper" (Ordinance #99-O-0021) as a part of the efforts of said department to reduce its budgets pursuant to this directive; and

WHEREAS, the fact of the proposed abolition of Lewis' position became public knowledge in the hearings, work sessions and committee meetings which are part of the budget process; and

WHEREAS, Lewis claimed both in public meetings, before the City Council and in the press that the abolition of his position was due to the fact that he spoke out on matters of "waste fraud and financial abuse" in the Campbell administration and that the real reason for his termination was his status as a "whistleblower," not for the purpose of reducing expenditures in the 1999 budget; and

WHEREAS, the City Council ultimately approved an amendment to Ordinance #99-O-0021, removing Lewis' position and those of two other employees from the list of those to be abolished; and

WHEREAS, Mayor Campbell issued a line item veto of that part of Ordinance #99-O-0021 for the purpose of removing the amendment which deleted the abolition of the positions at issue, with the intention that this veto would allow the abolition of the positions, including the position of Lewis; and

WHEREAS when the veto message was returned to the City Council, President Pitts ruled that the veto was "invalid" but the veto was not overridden by a vote of the Council; and

WHEREAS, Mayor Campbell wrote a letter to the City Council stating the President's

ruling was not an override of his veto and that the 1999 budget would be put into effect without including the positions subject to the veto and thereafter, the Bureau of Personnel and the Department of Finance took action as if Lewis' position was abolished and such action resulted in the termination of Lewis' employment with the City; and

WHEREAS, after the termination, Lewis did file suit in the United States District Court for the Northern District of Georgia in Case Number 1:99-CV-3078-ODE, styled as *Lewis v. the City of Atlanta, et al*, on certain claims arising under 42 U.S.C. § 1983; and

WHEREAS; ultimately in the summary judgment stage of the litigation, United States District Court Judge Orinda D. Evans ruled that the veto was not authorized by the City Charter, such that the case would proceed to trial on the "whistleblower" claims; and

WHEREAS, the causes of action alleged in the lawsuit arise under federal statutes which award statutorily determined damages to the prevailing plaintiff for back pay, and make possible the award of other damages, and provide for the automatic award of attorneys fees and costs to the prevailing party; and

WHEREAS, the parties have agreed on a method of settlement, which includes reinstatement of Thomas L. Lewis and a financial component, that the City Attorney has advised will settle the case in a manner that protects the best interests of the City.

THE CITY COUNCIL OF THE CITY OF ATLANTA GEORGIA HEREBY RESOLVES:

SECTION 1: That the City Attorney may consent to the entry of an order in the United States District Court which will cause Thomas L. Lewis to be reinstated as an employee in the unclassified service of the City of Atlanta with credit for service at his former grade and step from the date of his termination to through and including the date of the passage of this resolution and that the reinstatement be to a position at a grade and step to which Lewis would have achieved had his time of service not been interrupted by the acts which led to the termination of his employment;

SECTION 2: That the Commissioner of the Department of Personnel and Human Resources is authorized to adjust the entry step of the position of employment to which Lewis is to be hired to effect his reinstatement to employment with the City consistent with the terms of the consent order;

SECTION 3: That the Commissioner of the Department of Personnel and Human Resources shall determine the length of service which Lewis would have acquired as of the effective date of this resolution, had his termination not occurred and that this time be credited toward his length of service consistent with the terms of the consent order;

SECTION 4: That the Chief Financial Officer shall determine the amount of pension contribution plus any interest which Lewis would have to repay to fully fund his portion of the pension contribution required of employees for the length

of service as determined by the Commissioner of the Department of Personnel in Section 3 of this resolution;

SECTION 5: That the Chief Financial Officer is authorized to pay to the General Employees Pension Fund the amount described in Section 4 of this resolution for credit to the employee pension contribution of Thomas L. Lewis as though his termination had never occurred and is further authorized to fund and pay the City's portion of the pension contribution consistent with the time of service calculated in Section 3 of this resolution;

SECTION 6: That the Chief Financial Officer is authorized to pay by joint check to Thomas L. Lewis and Harry W. MacDougald, Esq. as attorney for Thomas L. Lewis a sum which is to be calculated by subtracting the amount determined in Section 4 of this resolution from the sum of two hundred thousand dollars (\$200,000) with said amount to be paid from FAC 1A01-529017-T31001 upon notice from the City Attorney that the necessary settlement agreement has been executed;

SECTION 7: That the City Attorney is authorized to enter into a settlement agreement, with Thomas L. Lewis and Harry W. MacDougald, Esq. as attorney for Thomas L. Lewis, which settles and releases any and all claims and causes of actions against the City arising from the termination of Thomas L. Lewis or accruing for any other reason regardless of whether such claims were alleged in the aforementioned lawsuit, provided that such settlement is consistent with the authority granted in this resolution and that no funds are expended in excess of those already authorized herein.